

# Regulatory Setting





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## REGULATORY SETTING AND POLICY FRAMEWORK

The proposed Master Plan is a project of Sonoma County Regional Parks and will require approval by the Sonoma County Board of Supervisors. Additionally, Sonoma County will act as the lead agency under CEQA.

Implementing the Master Plan will require compliance with existing federal, State, County, and Sonoma County Regional Parks’ regulations related to cultural and natural resources. All activities will be conducted consistent with all applicable laws, regulations, and permit requirements. Various project components will be subject to permits from resource and regulatory agencies. The regulatory setting considered during development of the Master Plan is described below.

### Federal

Many of the resources at the Park are regulated by federal environmental regulations, including endangered species, migratory birds, and wetlands. Development of the Master Plan may require consultation or compliance with federal regulations. In addition, Regional Parks solicited input from the Tribe.

### Archaeological Resources Protection Act

The most-used enforcement tool for the protection of cultural resources is The Archaeological Resources Protection Act of 1979 and amended in 1988. The purpose is “to protect irreplaceable archaeological resources and sites on federal, public, and Indian lands.” The Act prohibits damaging or defacing archaeological resources; excavating or removing archaeological resources without a permit; selling, purchasing, or trafficking of Native American archeological resources.



### The Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 requires federal agencies and institutions that receive federal funding to return Native American “cultural items” to lineal descendants and culturally affiliated Indian tribes and Native Hawaiian organizations. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. A program of federal grants assists in the repatriation process and the Secretary of the Interior may assess civil penalties. NAGPRA makes it a criminal offense to obtain or traffic Native American human remains or cultural items without right of possession.



Photo credit: Regional Parks staff

### National Register of Historic Places (NRHP)

Cultural resources’ significance is determined using the National Register of Historic Places (NRHP) four Criteria for Evaluation (Criteria A-D) at 36 CFR 60.4, which state that a historic property is any district, site, building, structure, or object that:

- Is associated with events that made a significant contribution to the broad patterns of our history (Criterion A);
- Is associated with the lives of persons significant to our past (Criterion B);

- Embodies the distinctive characteristics of a type, period, or method of construction; or that represents the work of a master, or that possesses high artistic values; or that represent a significant and distinguishable entity whose components may lack individual distinction (Criterion C); and/or
- Has yielded, or may be likely to yield, information important in prehistory or history (Criterion D).

If the State Historic Preservation Officer (SHPO) concurs that a cultural resource is eligible for inclusion to the NRHP, then it is automatically eligible for the California Register of Historical Resources (CRHR). If a resource does not have the level of integrity necessitated by the NRHP, it may still be eligible for the CRHR, which allows for a lower level of integrity.

Cultural resources' integrity is determined using the NRHP's seven aspects of integrity at 36 CFR 60.4, which state that a historic property must not only be shown to be significant under the NRHP criteria, but it also must retain historic integrity. The seven aspects of integrity include location, design, setting, materials, workmanship, feeling, and association. A property must meet one or more of the Criteria for Evaluation before a determination can be made about its integrity.

### Federal Endangered Species Act

The Federal Endangered Species Act (FESA) of 1973, as amended, provides the regulatory framework for the protection of plant and animal species (and their associated critical habitats), which are formally listed, proposed for listing, or candidates for listing as endangered or threatened under the FESA. The FESA also discusses recovery plans and the designation of critical habitat for listed species. Both the United State Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) Fisheries Service share the responsibility for administration of the FESA.

Photo credit: Regional Parks staff



### The Migratory Bird Treaty Act

The Federal Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), Title 50 Code of Federal Regulations (CFR) Part 10, prohibits taking, killing, possessing, transporting, and importing of migratory birds, parts of migratory birds, and their eggs and nests, except when specifically authorized by the Department of the Interior. As used in the act, the term “take” is defined as meaning, “to pursue, hunt, capture, collect, kill or attempt to pursue, hunt, shoot, capture, collect or kill, unless the context otherwise requires.” With a few exceptions, most birds are considered migratory under the MBTA. Disturbances that causes nest abandonment and/or loss of reproductive effort or loss of habitat upon which these birds depend would be in violation of the MBTA.

### Clean Water Act Sections 404 and Section 401

The U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) regulate the discharge of dredged or fill material into waters of the United States, including wetlands, under Section 404 of the Clean Water Act (CWA) (33 USC 1344). Waters of the United States are defined in Title 33 Code of Regulations CFR Part 328.3(a) and include a range of wet environments such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds. Activities in waters of the United States regulated under Section 404 include fill for development, water resource projects (e.g., dams and levees), infrastructure developments (e.g., highways, rail lines, and airports) and mining projects. Section 404 of the CWA requires a federal permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404

regulation (e.g., certain farming and forestry activities).

Section 401 of the CWA (33 U.S.C. 1341) requires an applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain a water quality certification from the state in which the discharge originates. The discharge is required to comply with the applicable water quality standards. The responsibility for the protection of water quality in California rests with the State Water Resources Control Board (SWCRB) and its nine Regional Water Quality Control Boards (Water Boards).

## State

Development of some proposed Master Plan uses, including trail improvements, would require approval from the State, including the San Francisco Regional Water Quality Control Board and Caltrans.

## Assembly Bill 52

Assembly Bill 52 (AB 52) was passed in 2014 and initiated compliance on July 1, 2015. AB 52 amended CEQA to address California Native American tribal concerns regarding how cultural resources of importance to tribes are treated under CEQA. CEQA now specifies that a project that may cause a substantial adverse change in the significance of a “tribal cultural resource” [as defined in PRC 21074(a)] is a project that may have a significant effect on the environment. According to AB 52, tribes may have expertise in tribal history and “tribal knowledge about land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.”

The AB 52 process entails:

- The CEQA lead agency must begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation.
- A proposed Negative Declaration, Mitigated Negative Declaration (MND), or a Draft EIR cannot be released for public review before the tribe(s) has had the opportunity to request consultation.
- If the tribe(s) requests formal consultation, a MND cannot be released for public review until consultation between the tribe(s) and the lead agency is completed and mitigation measures acceptable to the tribe(s) are incorporated into the MND and the related Mitigation Monitoring or Reporting Program (MMRP).

AB 52 further defines the following legislative terms:

- Tribal Cultural Resource: The passage of AB 52, created a new category of resource called a “tribal cultural resource” (TCR). The statute clearly identifies a TCR as a separate and distinct category of resource, separate from a historical resource. New PRC Section 21074 defines a “tribal cultural resource” as any of the following under its subsections (a) through (c):
  - (a) (1) Sites, features, places, and objects with cultural value to descendant communities or cultural landscapes that are any of the following:
    - » Included in the California Register of Historical Resources.
    - » Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
    - » Deemed to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1.

(a) (2) Sacred places, including, but not limited to, Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines that meet either of the following criteria:

- » Listed on the California Native American Heritage Commission's Sacred Lands File pursuant to Section 5097.94 or 5097.96 and a California Native American tribe has submitted sufficient evidence to the lead agency demonstrating that the sacred places are of special religious or cultural significance to the California Native American tribe or contain known graves and cemeteries of California Native Americans.
- » Listed or determined pursuant to criteria set forth in subdivision (g) of Section 5024.1 to be eligible for listing in the California Register of Historical Resources.

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Section 21083.2 also may be a tribal cultural resource if it conforms with the criteria of subdivision (a).

- California Native American Tribe: New PRC Section 21074 defines a "California Native American Tribe" to mean a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission (NAHC). This definition is broader than the concept of a "federally recognized tribe" that is typically used in implementing various federal laws, including the National Environmental Policy Act (NEPA).
- Formal Tribal Consultation: Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the lead agency shall provide formal notification to the designated contact of, or a tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, which shall be accomplished by means of at least one written notification notice that includes a brief description of the proposed project and its location as well as the lead agency contact information, and a notification statement that the federally recognized California Native American tribe has 30 days to request consultation.
- Treatment of Mitigation Measures and Alternatives: New PRC Section 21080.3.2 provides that as part of the consultation process, parties could propose mitigation measures. If the California Native American tribe requests consultation to include project alternatives, mitigation measures, or significant effects, the consultation would be required to cover those topics. New Section 21082.3 provides that any mitigation measures agreed upon during this consultation "shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring program" if determined to avoid or lessen a significant impact on a tribal cultural resource.

## California Register of Historical Resources

The CRHR is a listing of State of California resources that are significant within the context of California's history, and includes all resources listed in or formally determined eligible for the NRHP. The CRHR is a state-wide program of similar scope to the NRHP. In addition, properties designated under municipal or county ordinances are also eligible for listing in the CRHR. A historic resource must be significant at the local, state, or national level under one or more of the following four criteria defined in the CCR Title 14, Chapter 11.5, Section 4850:

1. It is associated with events or patterns of events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States (Criterion 1);

2. It is associated with the lives of persons important to local, California, or national history (Criterion 2);
3. It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values (Criterion 3); or
4. It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation (Criterion 4).

The CRHR criteria are similar to the NRHP criteria. Any resource that meets the above criteria is considered a historical resource under CEQA.

### California Endangered Species Act

The State of California enacted similar laws to the FESA, the California Native Plant Protection Act (“NPPA”) in 1977 and the California Endangered Species Act (“CESA”) in 1984. The CESA expanded upon the original NPPA and enhanced legal protection for plants. These laws provide the legal framework for protection of California-listed rare, threatened, and endangered plant and animal species. The California Department of Fish and Wildlife (CDFW) implements NPPA and CESA, and its Wildlife and Habitat Data Analysis Branch maintains the California Natural Diversity Database (“CNDDB”), a computerized inventory of information on the general location and status of California’s rarest plants, animals, and natural communities.

### Fully Protected Species and Species of Special Concern

The classification of “fully protected” was the CDFW’s initial effort to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, amphibian and reptiles, birds, and mammals. Most of the species on these lists have subsequently been listed under CESA and/or FESA. Species of special concern are broadly defined as animals not listed under the FESA or CESA, but which are nonetheless of concern to the CDFW because they are declining at a rate that could result in listing or historically occurred in low numbers and known threats to their persistence currently exist. This designation results in special consideration for these animals by the CDFW, land managers, consulting biologist, and others.



Credit: Regional Parks staff

### Other Sensitive Plants – California Native Plant Society

The California Native Plant Society (“CNPS”), a non-profit plant conservation organization, publishes and maintains an Inventory of Rare and Endangered Vascular Plants of California in both hard copy and electronic version ([www.cnps.org/rareplants/inventory/6thedition.htm](http://www.cnps.org/rareplants/inventory/6thedition.htm)). The Inventory assigns plants to categories and such species should be fully considered, as they meet the definition of threatened or endangered under the Native Plant Protection Act (NPPA) and Sections 2062 and 2067 of the California Fish and Game Code.

### Porter-Cologne Water Quality Control Act

Waters of the State are defined by the Porter-Cologne Act as “any surface water or groundwater, including saline waters, within the boundaries of the state.” The State Water Board protects all waters in its regulatory scope, but has special responsibility for isolated wetlands and headwaters. These water bodies have high resource value, are vulnerable to filling, and may not be regulated by other programs, such as Section 404 of the Clean Water Act (CWA). Waters of the State are regulated by the Water Boards under the State Water Quality Certification Program, which regulates discharges of dredged and fill material under Section 401 of the CWA and the Porter-Cologne Water Quality Control Act.

## California Fish and Game Code Section 1600-1616

Streams, lakes, and riparian vegetation, as habitat for fish and other wildlife species, are subject to jurisdiction by the CDFW under Sections 1600-1616 of the California Fish and Game Code. Any activity that will do one or more of the following: (1) substantially obstruct or divert the natural flow of a river, stream, or lake; (2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake; or (3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake generally require a 1602 Lake and Streambed Alteration Agreement. Removal of riparian vegetation also requires a Section 1602 Lake and Streambed Alteration Agreement from the CDFW.

## Sensitive Vegetation Communities

Sensitive vegetation communities are natural communities and habitats that are either unique in constituent components, of relatively limited distribution in the region, or of particularly high wildlife value. These communities may or may not necessarily contain special-status species. Sensitive natural communities are usually identified in local or regional plans, policies or regulations, or by the CDFW (i.e., CNDDDB) or the USFWS.

## Caltrans

Designated State Route facilities are under the jurisdiction of the California Department of Transportation (Caltrans), except where facility management has been delegated to the county transportation authority. Roadway improvements and other work within state roads right-of-way would require coordination with and approval from Caltrans.

## County

### Sonoma County General Plan

California State Government Code Section 65300 requires each county and city, including charter cities, to adopt a comprehensive General Plan which is an integrated and internally consistent statement of goals, objectives, policies and programs to provide for future land use decisions. Goals, objectives and policies in each element of the General Plan reflect the future needs and desires of the community.

The Sonoma County 2020 General Plan Land Use map designates the Park as Diverse Agriculture. The site is zoned Land Extensive Agriculture District (LEA) and Land Intensive Agriculture District (LIA) with a Scenic Resource (SR) and Valley Oak Habitat (VOH) Combining District.

### Sonoma County Public Works

County roadways in the Master Plan area are under the jurisdiction of Sonoma County Public Works. Roadway improvements and other work within County roads right-of-way would require coordination with and approval from Sonoma County Public Works.

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Encumbrances summary can be found in Chapter 6 Resource Mangement Plan page 87.